

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 18-M-1101-RML
:
- versus - : U.S. Courthouse
: Brooklyn, New York
:
LUCIO CELLI, : February 5, 2019
Defendant : 2:33 PM
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TRANSCRIPT OF CRIMINAL CAUSE FOR BAIL HEARING
BEFORE THE HONORABLE ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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1 (The Court's microphone not functioning properly for most
2 of the proceeding, thereby causing indiscernible portions
3 in the record.)

4 THE CLERK: Criminal Cause for a Bail
5 Application, case number 18-M-1101, United States v.
6 Lucio Celli.

7 Counsel, your name for the record.

8 MS. BENSING: AUSA Kayla Bensing.

9 Good afternoon, your Honor.

10 MS. OLIVERA: Good afternoon, your Honor.

11 Leticia Olivera, Federal Defenders of New York
12 on behalf of Mr. Celli, who is standing to my left.

13 THE COURT: Good afternoon, Mr. Celli.

14 THE DEFENDANT: Good afternoon, sir.

15 THE COURT: Okay. So I understand there's an
16 application.

17 MS. OLIVERA: Yes, your Honor. We are
18 presenting a bail package today. We're asking that Mr.
19 Celli -- so we submitted a written bail application to
20 the Court.

21 As we represented in that motion, we're asking
22 the Court to release Mr. Celli on a collateral bond
23 secured by his parent's home. His parents are in the
24 courtroom today. If released, Mr. Celli is prepared to
25 go live with his parents and submit to whatever

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1 restrictive conditions of bail the Court imposes
2 including home detention with electronic monitoring,
3 restrictions on email and internet use.

4 He is also willing to submit to whatever mental
5 health treatment but, you know, I will say whether or not
6 pretrial services recommends treatment here, Mr. Celli
7 does want to participate in mental health treatment. He
8 was seeing a psychologist before his arrest and
9 participating in treatment at St. Joseph's Medical
10 Center. If released, he would like to continue receiving
11 mental health treatment.

12 During the past three months at the MDC, Mr.
13 Celli has only had access to a psychiatrist who has
14 prescribed him medication. He has been taking that
15 medication for the past three months. Despite his mental
16 health needs and, of course, the fact that he has been in
17 jail for the first time in his life for the past three
18 months, Mr. Celli has adjusted as well, as can be
19 expected to the situation. He hasn't had any incidents
20 while at the jail. He understands the offense that he is
21 charged with and the gravity of it. He has been working
22 closely with me on his case.

23 The offense that Mr. Celli is charged with
24 carries a five-year maximum term of imprisonment. Based
25 on my calculation, he's facing a guidelines range,

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1 assuming he pleads guilty, of 10 to 16 months.

2 We're asking the Court to give him the
3 opportunity to be released on bond, to continue to make
4 progress on his mental health. Given that he's already
5 done three months in jail and is facing such a low
6 guidelines range, we think it makes sense to give him the
7 opportunity to prove himself, to potentially go back to
8 work if he is able to and live with his family and
9 continue to move forward with his life while his case is
10 pending.

11 Now -- one moment.

12 THE DEFENDANT: Sorry, your Honor.

13 (Counsel and client confer)

14 MS. OLIVERA: Mr. Celli is doing everything he
15 can to participate in mental health services at the MDC.
16 They are somewhat limited but he has, you know, requested
17 books on PTSD. He's trying to do whatever he can to make
18 it through his time there and would like the opportunity
19 to be released and participate in -- and continue to
20 participate in psychiatric treatment.

21 Now, there is no presumption of detention in
22 this case. So the burden is on the government to prove
23 that Mr. Celli is a danger by clear and convincing
24 evidence. There is no allegation that Mr. Celli did
25 anything other than send emails.

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1 We have -- the government to-date has not
2 indicated that there was any reason to believe Mr. Celli
3 presented a danger of physical harm to anyone. He has no
4 criminal history. His long record of public service,
5 close family ties and law-abiding conduct, I think, all
6 weighs in favor of finding that he does not present a
7 danger to the community which means that under the Bail
8 Reform Act, he must be released.

9 THE COURT: All right

10 MS. BENSING: Thank you, your Honor. The
11 government continues to oppose the defendant's release
12 and I want to just touch upon a few things. The first is
13 that defense counsel characterizes the conduct in this
14 case as sending emails but I think it's worth
15 underscoring the nature and content of the emails sent in
16 this case which was violent.

17 It was sent to a number of individuals.
18 Subject line was: "Brodie and Cogan. You mother-f'ers
19 sent the U.S. Marshals and they threatened my DUI case,
20 et cetera, but I can't file in court like a normal
21 person. I have to f-stab you to get justice."

22 A second email sent the same day said, "Katzman
23 and Stewart, either you deal with the U.S. Marshal threat
24 from Brodie and Cogan or I hunt them down and kill them
25 because they want to act like the Mafia. They have to

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1 die like the Mafia."

2 I understand that this was emails and there's
3 no physical or attempted physical conduct -- contact in
4 this case yet but I want to highlight the progression
5 here which is that the defendant was arrested in a DUI
6 case, I believe a couple of years ago now.

7 Subsequent to that he got or around the same
8 time, he got embroiled in civil litigation. He was a
9 defendant in one case. He was a pro se plaintiff in
10 another case. Both of the cases were dismissed. Both of
11 which were dismissed, you know, pursuant to opinions,
12 pursuant to the way that our court system works.

13 He sent one email in March of last year that
14 was inappropriate. The marshals approached him, asked
15 him to stop, obtained his understanding that he knew that
16 these were inappropriate communications and yet there was
17 another round of emails in the fall.

18 And I understand that there are real --
19 potentially real mental health issues in this case and
20 the government is open to getting submissions about that
21 that are detailed and that have a treatment plan and that
22 contain information as to whether the defendant was on
23 medications at the time that he committed this, whether
24 the defendant is on those same medications now, what
25 treatment he was receiving at the time that he did this

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1 offense, what treatment he is receiving now and what
2 treatment he is going to receive when he gets out.

3 But the submission presented today doesn't
4 contain any of that information and so I -- the
5 government continues to be concerned about the safety of
6 the community and the safety of the victims and continues
7 to oppose bail.

8 THE COURT: Yes. Predictions of future
9 violence and other (indiscernible) threats but threats of
10 harm are serious and we have to take them seriously but
11 what concerns me the most (indiscernible) stop sending
12 inappropriate email (indiscernible). You know, something
13 (indiscernible) November 12th (indiscernible) something
14 happened to cause him, not only to send more
15 inappropriate (indiscernible) Judge Brodie but that more
16 -- more serious, more disturbing threats (indiscernible).

17 So the question what happened between those
18 dates and what's happened since then --

19 MS. OLIVERA: Well, your Honor, just to correct
20 the time line presented by the government, Mr. Celli's --
21 Mr. Celli has no prior convictions. Around the time of
22 his DUI offense, he was experiencing issues with
23 substance abuse. That is why he was placed in substance
24 abuse treatment at St. Joseph's Medical Center.

25 THE COURT: And this was somewhere around the

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1 arrest of September 8th, 2017?

2 MS. OLIVERA: That was --

3 THE COURT: You're talking about the DUI.

4 MS. OLIVERA: -- early in 2018. So I am
5 starting a little bit further back than your Honor
6 requested but --

7 THE COURT: I'm talking about the active DUI.

8 MS. OLIVERA: Yes. So he was experiencing
9 issues with substance. He did become involved in an
10 employment dispute and I think the fact that the marshals
11 went to visit him and then didn't take any action on his
12 case for over eight months, I think, shows that there was
13 no indication at that time that he presented a real
14 danger to anyone.

15 Now if --

16 THE COURT: I'm sorry, but we're going to have
17 to start (indiscernible)?

18 MS. OLIVERA: March -- from March to November.

19 THE COURT: Right, because of the date
20 (indiscernible) and then (indiscernible) two
21 (indiscernible) and then everything was going fine, no
22 problem with (indiscernible). In November, somewhat --
23 perhaps more disturbing (indiscernible).

24 THE DEFENDANT: So I am -- no, I -- no, wait.
25 (Counsel and client confer)

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1 THE DEFENDANT: The New York City Mental Health
2 was sent by Judge Brodie to threaten me with either take
3 away my judicial complaint or they were going to
4 institutionalize me.

5 (Counsel and client confer)

6 THE DEFENDANT: No, wait. No. And then my DUI
7 lawyer told me I was gig to be convicted of DUI drugs,
8 even though I tested negative for cocaine. I was going
9 to be convicted of DUI drugs because I was having
10 flashbacks. So that's what -- and then I had the U.S.
11 Marshals -- no, you can record everything -- I had U.S.
12 Marshals threaten my -- my -- my DUI case.

13 So there's documents missing from the docket.
14 So I felt I had no other -- I had no other choice. Would
15 I -- would I -- I prefer to do everything on the up and
16 up. I felt I had no other choice. And I even said that
17 on the audio recording, so -- on video tape. So
18 that's --

19 So I don't have any plans on carrying out any
20 threat. My plans are to get vindicated and because Judge
21 Brodie lied, she knew -- she knew that March 16th, I said
22 that Randi Weingarten has to look me in my eyes and tell
23 me why I need to be ashamed of being raped. That's what
24 I want. That has nothing to do with hurting anybody and
25 the -- the AUSA knows she's mischaracterizing it and is

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1 conducting misconduct.

2 I had no intention of hurting anybody. I want
3 my rights and I was born in this country. My parents are
4 immigrants and I want my rights.

5 MS. OLIVERA: Your Honor, as --

6 THE COURT: Sounds like a pretty awful
7 experience that you had some -- I don't want to say
8 anything more to make (indiscernible) place
9 (indiscernible) have a lot of PTSD and flashbacks
10 afterwards (indiscernible).

11 MS. OLIVERA: Your Honor, Mr. Celli, as he just
12 conveyed, was experiencing some psychological distress
13 but the person that was arrested in November is very
14 different than the person that is standing before the
15 Court today.

16 He has been in custody for the past three
17 months. He's been charged with a federal crime. His job
18 is on the line. His freedom is on the line. He
19 understands the gravity of the situation that he fines
20 himself in and we're asking for an opportunity for him to
21 be released, get the psychiatric treatment he needs and
22 resolve not only this case but also his pending DUI case.

23 Since he's been in federal custody, he hasn't
24 been produced to state court to help him deal with that
25 case. Now if there's any concern that Mr. Celli presents

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1 a danger to the community, he is willing to submit to
2 home confinement and electronic monitoring. And as I
3 mentioned, have his internet and email access restricted
4 and monitored by pretrial services.

5 His parents are in the courtroom today. They
6 are willing to not only put up their home as collateral
7 for any bond but they're also willing to serve as third-
8 party custodians to ensure that Mr. Celli complies with
9 whatever conditions of pretrial release that he is
10 subject to.

11 MS. BENSING: Your Honor, may I respond?

12 THE COURT: Yes.

13 MS. BENSING: Thank you. Just initially as to
14 the state case, I just want to note for the record that
15 the defendant pled guilty in that case on October 30th,
16 2018, to operating a motor vehicle without a license and
17 driving while his ability was impaired. So I would note
18 that that's the status of the state case and I actually
19 got a call from the prosecutor in that case today
20 requesting his production which, of course, I would
21 consent to. I forgot the date. I literally just got the
22 call right before I came over.

23 THE COURT: Uh-hum.

24 MS. BENSING: So that's the status of the state
25 case. I also wanted to say that the government has

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1 obtained several of the defendant's calls that he's
2 placed while incarcerated and I want to highlight some of
3 them for the Court.

4 On November 20th, the defendant stated in a
5 call, "I don't want them to get away with what they did
6 to me, the judges."

7 On November 22nd in a call, the defendant
8 stated, "You 'F' with judges and they're going to 'F'
9 with you.

10 Later on November 22nd, he said, "Well, I went
11 the right way. It didn't work, so I figured I'd go this
12 way and it is what it is. I have plans of getting
13 justice."

14 In a call on December 3rd, the defendant
15 stated, "I am not ashamed of why I am here. There is a
16 reason why I did this. I did this because the judges
17 lied under oath and they need to answer for it, plain and
18 simple."

19 There's a number of statements like this that I
20 think are on par with the statements that the defendant
21 has made today and I am sympathetic to the mental healths
22 concerns here and I am sympathetic to the fact that there
23 appears to be a real history here.

24 But nonetheless, the government's concern is
25 the safety of the victims and the progression in this

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1 case has not been positive.

2 THE COURT: And so I think what you've
3 requested which doesn't seem unreasonable is that the
4 (indiscernible) in terms of the (indiscernible) to ensure
5 that there won't be (indiscernible) threats or acting on
6 the statements that the government is (indiscernible).

7 So I think it's a (indiscernible). I think
8 it's missing that (indiscernible) experts
9 (indiscernible).

10 MS. OLIVERA: What we have provided to the
11 Court are records showing that Mr. Celli was
12 participating in treatment at St. Joseph's Medical
13 Center. That treatment was focused on addressing
14 substance abuse, help PTSD, and also helping him with his
15 interpersonal relationships.

16 Now if he is released, I am confident that
17 pretrial services will work with him to help make sure
18 that he's getting all of the treatment that he needs.
19 Mr. Celli is willing to submit to intensive outpatient
20 mental health treatment, or in-patient drug treatment, if
21 it's deemed necessary but I think that there's no doubt
22 that if he is released, pretrial services is going to
23 make sure that he not only gets access to the treatment
24 that he needs but also complies with whatever they
25 require of him in terms of treatment.

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1 So I have no issue with providing a treatment
2 plan to the Court and providing additional records but I
3 think what's going to be most important when he is out on
4 bail is that he comply with the conditions of bail, and I
5 have no doubt that pretrial is going to take his mental
6 health issues seriously and get him the help that he
7 needs.

8 THE COURT: What's the status with the case?

9 MS. BENSING: The current federal case, your
10 Honor?

11 THE COURT: Uh-hum.

12 MS. BENSING: So I am not sure whether or not
13 the defense will be seeking a third OED today but they
14 have previously sought two prior OEDs which the
15 government has consented to in the hopes of receiving a
16 submission as to the defendant's mental health status and
17 potentially resolving this case short of the charges in
18 the complaint.

19 I received a submission on Friday evening. I
20 spoke to Ms. Olivera about it yesterday and raised
21 similar concerns to what I am raising today which is that
22 the government continues to lack an understanding of when
23 he receives certain diagnoses, what treatment during what
24 periods he received, what medication during what periods
25 he was on and a coherent treatment plan moving forward.

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1 And I expressed those concerns to Ms. Olivera last night.

2 THE COURT: So it sounds as though the same
3 issues that could resolve this case are the same issues
4 that (indiscernible) today (indiscernible).

5 MS. OLIVERA: Yes, but what I would say is, you
6 know, under the Bail Reform Act, Mr. Celli is presumed to
7 be released unless the government can prove his
8 dangerousness by clear and convincing evidence. So I
9 don't want to confuse our plea negotiations with what's
10 required under the Bail Reform Act and I think that it's
11 inconsistent with the Bail Reform Act to require Mr.
12 Celli to bear the burden of proving that he doesn't
13 present a danger and we're happy to do -- to provide
14 whatever information is helpful but I think the standards
15 are very different and again, despite the nature of the
16 case, I am not disputing the nature or the content of the
17 emails. This is an offense that carries a five-year max.
18 It's not a crime of violence and there's no presumption
19 of detention.

20 THE COURT: Of course. But I think the
21 government has raised -- I think the light turned off
22 here.

23 (The Court's microphone turned on)

24 THE COURT: I think the government has raised
25 serious issues from the statements that were taken from

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1 recorded conversations that suggests that the same
2 concerns that prior judges had about, where he is and
3 what his intentions are, still exist and in fact, in
4 troubling ways.

5 So in order to rebut that, I think it would be
6 incumbent on the defense to provide some information that
7 would provide insight either into his condition at this
8 point, and/or the treatment plan, so that he would not be
9 a danger to the community if he is released.

10 At this point, the evidence that I have is that
11 instead of de-escalating, the threats have actually
12 escalated or from March of 2018 to November of 2018 and
13 then thereafter, didn't dissipate and, in fact, continued
14 to be troubling based on what the government said
15 thereafter.

16 So at this point, there's no reason to -- I
17 mean, the finding that there was clear and convincing
18 evidence that he was a danger to the community was one I
19 believe that's been made earlier and there's nothing in
20 the record that changes that.

21 So that's -- my suggestion was if you want to
22 put in something in the record that would help change
23 that, then come back to court and the judge will hear you
24 on that but at this point, those statements are
25 uncontradicted, you know, other than your assurance and

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1 an attorney's assurance -- I know you mean well but I
2 don't think your assurance is sufficient.

3 MS. OLIVERA: Understood.

4 MS. BENSING: As to --

5 (Counsel and client confer)

6 THE CLERK: 30 days from today?

7 MS. OLIVERA: Yeah.

8 THE CLERK: Let's do March 7th or 8th. 7th is
9 a Thursday, the 8th is a Friday.

10 MS. OLIVERA: Okay, I will do March 7th.

11 THE COURT: So, Mr. Celli, do you understand
12 what it means to exclude time?

13 THE DEFENDANT: Yes, I've been through this
14 already with Judge Mann.

15 THE COURT: All right. Okay. So your -- we
16 didn't put the day by which you want to exclude it to.
17 So we have 2/5 to --

18 THE CLERK: 3/7.

19 THE COURT: -- 3/7, so shall I put that in?

20 THE CLERK: Yes.

21 THE COURT: Okay. So you're excluding speedy
22 indictment time, as you've done before from March --
23 February 5th through March 7th. Do you have any
24 questions about what you are doing?

25 THE DEFENDANT: No.

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1 THE COURT: Are you making that decision
2 voluntarily?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. The application is granted.
5 And again, if you would like to make a submission, the
6 Court will hear you on the other submissions.

7 MS. OLIVERA: Thank you, your Honor.

8 THE CLERK: Anything else?

9 MS. OLIVERA: No, thank you.

10 MS. BENSING: Nothing further.

11 THE CLERK: Okay, thank you.

12 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 4th day of March, 2019.


Linda Ferrara

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